



COMMONS REGISTRATION ACT 1965

Reference No. 268/U/309

In the Matter of The Village Green,  
Thornton Rust, Richmondshire  
District, North Yorkshire

DECISION

This reference relates to the question of the ownership of land known as the Village Green, Thornton Rust, Richmondshire District being the land comprised in the Land Section of Register Unit No. VG156 in the Register of Town or Village Greens maintained by the North Yorkshire (formerly North Riding) County Council of which no person is registered under section 4 of the Commons Registration Act 1965 as the owner.

Following upon the public notice of this reference (1) Mr T D Green and Mrs Mabella Green claimed (letters dated or received 28 November, 7 and 11 December 1984 and 23 January 1985) the part of the land ("the Unit Land") in this Register Unit which is south of the street ("the Main Street") through the Village and between it and Longrigg (a dwellinghouse south of and fronting on the Unit Land); (2) Mr Kenneth James Jolley claimed (letter dated 1 December 1984) ownership of the part of the Unit Land which is north of the Main Street and which is south of Hirstwood and Pinehurst (dwellinghouses with gardens north of and fronting on the Main Street); and (3) Mr Thomas Metcalfe, Miss Isobel Metcalfe and Mr William Arthur Metcalfe claimed (their Solicitors' letters of 14 December 1984 and 11 January 1985) ownership of a part of the Unit Land approximately 14 feet from north to south and 10 feet from east to west situated next to and within the east side of the part of the Unit Land hereinafter called "the Outgang Piece". No other person claimed to be the freehold owner of the land in question or to have information as to its ownership.

I held a hearing for the purpose of inquiring into the question of the ownership of the land at Northallerton on 18 April 1985. At the hearing (1) Aysgarth and District Parish Council was represented by Mrs Frances Georgina Ramsbotham their Clerk; (2) Mr Thomas Metcalfe, Miss Isabel Metcalfe and Mr William Arthur Metcalfe all of Walker Garth, Thornton Rust (formerly of South View, Thornton Rust) were represented by Mr I C Scott solicitor of Malcolm E Scott & Son, Solicitors of Leyburn; (3) Mr Kenneth James Jolley of Pinehurst, Thornton Rust attended in person; and (4) Mr Thomas Dixon Green and Mrs Marabella Mary Green both of Longrigg, Thornton Rust also attended in person.

The more important part of the Unit Land comprises two strips (one discontinuous) on both sides of the Main Street each about 250 yards long and having a width varying between 2 or 3 feet to more than 20 feet (in some places more); they are open to the Main Street public carriageway and are for the most part grass except where crossed (in numerous places) by paths and tracks providing access to the dwelling houses and other buildings which front on the Main Street. Not far from the middle of the Unit Land, the Main Street crosses West Beck (a tributary of the River Ure). The Unit Land includes an area ("the Outgang Piece") extending southwards for about 70 yards from the said strips, at first narrow but as it



runs southwards towards a ford over the West Beck it gradually widens. The Unit Land also includes another area extending southwards from the said strips for about 70 yards by the side of West Beck, and two much smaller strips extending southwards (about 30 yards) and westwards (about 25 yards) from the south end of the Outgang Piece.

In support of his claim to be the owner of part of the Outgang Piece, Mr Thomas Metcalfe who is 77 years of age and has lived in Thornton Rust since 1920 gave oral evidence in the course of which he produced the documents specified in Part I of the Schedule heretofore and said (in effect):- Under the 1963 assent (TM/1) he (with I suppose Isabel Metcalfe and William Arthur Metcalfe and perhaps also Elizabeth Metcalfe) is the owner of a field, a house and a calf shed known as Outgang, which adjoins the Outgang Piece; the field is on the Register Map OS No. 152 containing 0.532 acres. The valuation (TM/2) was produced to show that the Tithe Nos 61a and 62 are the same as OS No. 152; in the valuation No. 62 is the more southerly and is described as "Garth" and containing "25p"; there are now no buildings on No. 62. The building ("the Calf Building") is now used for storing a tractor; but about 20 years ago it was used as a calf house; when so used the manure from the calves was put on the Midden on the other side of the road (running southwards from the Main Street along the length of the Outgang Piece to the Ford); it was so used from 1920 to 1965. Since then the Midden has been used for disposing of rubbish and storing implements. No other person has so used it and no person objected to it; the Midden to which he referred is about 10 feet by 14 feet.

In support of his claim Mr Kenneth James Jolley who was surveyor to Aysgarth Rural District Council from 1954 to 1974 and subsequently to 1979 their Deputy Chief Technical Officer in the course of his oral evidence said (in effect):- In 1959 he purchased Pinehurst, where he now resides (OS No. 189) and the adjoining fields (OS No. 187); in 1969 on the field he built a bungalow now called Hurstwood. He claimed to be the owner of the part of the Unit Land upon which now front Pinehurst and Hurstwood because he had maintained it although having no formal title and because in 1959 he considered it to be highway verge.

Questioned by Mrs Ramsbotham, Mr Jolley said (in effect):- If he felt the vesting of the Unit Land in the Parish Council would secure its continuous maintenance he would be delighted. He preferred himself to have the responsibility for the parts of the Unit Land by Pinehurst and Hurstwood. Other parts of the Unit Land had been used for the deposit of disused agricultural vehicles, bedsteads and rubbish, and this is its condition now. The claims of the Parish Council and the Parish Meeting made for so many years of their having tried to maintain the Unit Land have lost their credibility.

Mrs Ramsbotham protested against these criticisms by Mr Jolley saying that the Parish Council never authorised rubbish being deposited and (there being no complaint to a Parish Meeting) did not wish to spend public money going to law to stop it.

In support of his claim to own part of the Unit Land fronting on Longrigg, Mr Thomas Dixon Green who has lived in Longrigg since 1978 and known it since 1974 gave oral evidence by reference to his said letter received 23 January 1985 with which was enclosed a print of the OS map 1/2,500 on which he had coloured in red the property (Longrigg, formerly known as Lyndhurst) and coloured in green the part of the Unit Land of which he claimed to be the owner and said that Mr M Jubb who owned the property from 1930 to 1945 made the area coloured green into a lawn →



- 3 -

and he and subsequent owners up to and including Mr Peter Davy from whom they purchased the property in August 1974 had maintained this lawn without assistance from either the former Parish Meeting or the present Parish Council. An uncoloured copy of the said print ("the Decision Plan") on which has been written "Longrigg" and "The Outgang", on which the red colouring on the original appears wholly black and on which the land edged green on the original I have surrounded by a thick black line (the land so surrounded adjoining the north-east side of the land marked black and adjoining the south-east edge of the made up carriageway of the Main Street) is page 4 of this decision. Mr Green in the course of his oral evidence produced the documents specified in Part II of the Schedule hereto and said (in effect):- The land coloured green on the said print is immediately in the front of his house Longrigg and has always been a lawn since the time of Mr Jubb's ownership. They (he and his wife) had made one addition in that they had put up about 3 years ago posts and cord to prevent the cows (using the Main Street) walking on their lawn which they had been doing much to their annoyance. As to the suggestion (made by Mrs Ramsbotham) as everybody is expected to keep up that part of the Village Green opposite to his house, "some people do and some dont".

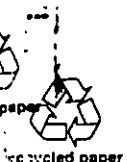
Mr Jolley continuing his evidence in support of the claim of Mr Green said that he had known Longrigg (formerly Lyndhurst) since 1954 and knew Mr Monks who was then the owner and being told by him that Mr Jubb had built up the ground where the lawn now is cutting soil there to do it, and there used to be a staircase now covered by the soil put there by Mr Jubb which gave access to the first floor.

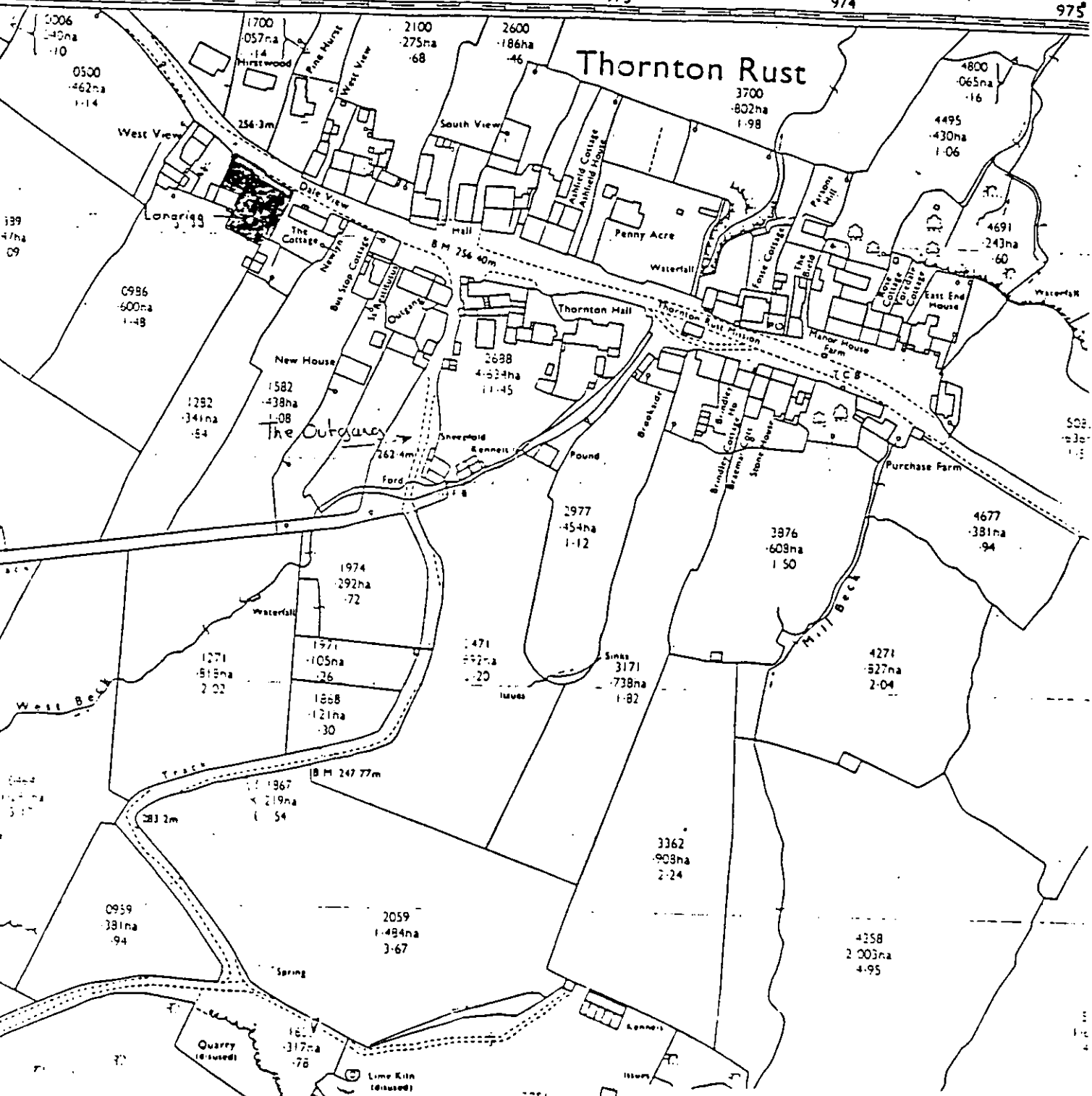
Mrs Ramsbotham submitted (in effect):- Legally the Unit Land is a Village Green and people are expected to keep part of a Village Green on which their land fronts tidy. But it is impossible to keep it tidy (meaning in the sense that some village greens are kept tidy) because Main Street is regularly used by cows; some of the paths for access have been gravelled over which result in the Unit Land looking tidier. There are the other parts of the Unit Land, posts (and cord or chained to keep out the cows) put up by public subscription. The road from the village along the Outgang Piece to the ford is the usual entrance to the Moor.

The day after the hearing I inspected the Unit Land in the presence of Mrs Ramsbotham Mr Metcalfe and Mr Jolley. In the course of such inspection Mr Jolley produced documents specified in Part III of the Schedule hereto.

As to the claim of Mr Metcalfe:-

As was apparent at my inspection, the part of the Unit Land at the hearing called "the Midden" is now a bank the highest part of which is about 3 feet above the level of the road; on the other side of the road and opposite there is the Calf Building, the lintel being inscribed "RM 1806". Mr Metcalfe explained that his father (he died about 1960) kept stock in the Calf Building; in those days the feed was dry (hay) so the manure put on the Midden could be (and was) as convenient put on his land; he Mr Metcalfe did not (after 1960) keep calves there. While giving his evidence at the hearing, Mr Metcalfe apart from "yes" or "no" in answer to questions by Mr Scott said very little; I consider the word "midden" tendentious as a description of the part of the Unit Land claimed by Mr Metcalfe. I find that from 1940 to 1960 the Calf Building was used for calves and that a vacant space opposite the entrance which could be conveniently used for temporary storage of (until distributed on the fields) the manure resulting from the calves was so used





COMMONS REGISTRATION ACT 1965  
 Re: Village Green, Thornton  
 Rust, Richmondshire District,  
 N. Yorks.  
 Ref:- 268/U/309.  
 This is the decision plan  
 referred to in and being  
 page 4 of the decision dated  
 29 January 1986 and made by  
 the Commons Commissioner in  
 this Matter.

*a. a. Baslin Toller*

COMMONS COMMISSIONER





but that such use would be considered unobjectionable to any person who might own the Unit Land or this part of it, and so did not constitute a taking of or being in possession either such as would be adverse to any such person or at all. There is room in the Calf Building for more than a tractor; I find that the after 1960 the leaving from time to time on the so-called Midden agricultural implements for which there was not enough room in the Calf Building was not of such an excluding character as to amount to taking or being in possession. I think somehow Mr Metcalfe persuaded himself that he was or should be as successor to his father the owner of the so called Midden; by his answers to the questions put to him by Mr Scott I am not persuaded that he had any good grounds for so thinking. My decision is therefore that neither his father nor he nor any of the other persons represented by Mr Scott have ever been the owners of any part of the Unit Land so called.

As to the claim of Mrs Green:-

The appearance of the part of the Unit Land so claimed favours the claim. The front wall of the dwellinghouse Longrigg is an unusual structure; the lawn is about 2 or 3 feet above the road level, and appears to have been built (as Mr Jolley said it had been), and as such to be property appertaining to Longrigg as a dwelling house. Notwithstanding that the posts and cord were erected comparatively recently to protect the lawn from passing cattle, I think Mr Jolley rightly concluded from the appearance and what was said to him by Mr Monks that the lawn land had been built up by Mr Jubb some time before 1945. Although this part of the Unit Land was not included or at least not distinctly included in any of the plans on the documents of title produced, I consider that after 1945 this lawn part of the Unit Land apparently belonged to Longrigg and passed under the conveyances produced.

For these reasons I am satisfied that Mrs Green is the owner of it (my note of the 1974 conveyance is that it was made to her and not to Mr T D Green and her as might be inferred from their letter of 28 November 1984), and I shall accordingly pursuant to section 8(2) of the 1965 Act direct North Yorkshire County Council as registration authority to register Mrs Mabella Mary Green of Longrigg, Thornton Rust, Leyburn, North Yorkshire as the owner of that part of the Unit Land, which adjoins the north east side of the land marked black on the decision plan and adjoins the south east edge of the made up carriageway of the Main Street and which is delineated on the Decision Plan by a thick black line.

As to the claim Mr Jolley:-

In favour of his claim, the part of the Unit Land between Pinehurst and Hirstwood and the northern edge of the carriageway of the Main Street appears to be (as he said) highway verge and as such presumed (notwithstanding it may not be expressly included in the parcels of the documents of title) to be in the same ownership as that of the land on which it fronts. But against the claim I have that this presumption is rebuttable and the inclusion of the claimed part in a village green registration rebuts the presumption at least if the village green so registered can properly be regarded as a piece of land distinct from the highway, and the claimed part can properly be regarded as a part of such piece.



That a great part of the Unit Land abutting on the highway being the Main Street can properly be regarded as a distinct piece of land forming no part of the highway was I think obvious enough on my inspection. If all depended on what a person walking once through the village thought was the proper boundary of this distinct piece of land the greater part of which was undoubtedly village green, there could be much controversy about the answer; perhaps many of such hypothetical persons → drawing the boundary would not have gone as far west as Pine Hurst. On this aspect of the matter, I am bound by the 1965 Act: because the Land Section registration has become final, by section 10 of the Act the part now claimed by Mr Jolley is conclusively within the 1965 Act definition of a Village Green. I therefore have some evidence rebutting the presumption of Mr Jolley's ownership.

Looking at the claimed part I thought any maintenance of it by him could not amount to a taking of or being in possession: the part is very little above the level of the road; the surface of some of it is not relevantly different from the surface of the road; much of it is grass. Although I did not see it at its best I accept that Mr Jolley's evidence that the attention he gave it has improved its appearance. But I am not persuaded by anything he said at the hearing or anything I saw at my inspection that what he did was such as to amount to a taking, or being in, possession of it.

Balancing these conflicting considerations as best I can, I am not satisfied that Mr Jolley is the owner of the part of the Unit Land which he claims, and I consider irrelevant, and therefore express no opinion about, the conflict between him and the Parish Council as to which of them would maintain it better.

As to the rest of the Unit Land including the parts unsuccessfully claimed by Messrs Metcalfe and Mr Jolley:-

Mrs Ramsbotham did not suggest that I should be satisfied that the Parish Council are now the owner, being I suppose content to rely on subsection (3) of section 8 of the 1965 Act under which if I am not satisfied as to the ownership of any person, the land will by operation of law vest in the Parish Council.

Mrs Ramsbotham said that the two fingers (meaning the said two strips extending southwards and westwards on the south end of the Outgang Piece) had been let by the Parish Council (? meaning the Parish Meeting) for grazing from time immemorial; this is some evidence of their ownership of these two fingers, see my decision of even date about Register Unit CL206, Thornton Mire and Thornton Quarry. I consider the part of the Unit Land subject to any such letting to be far too small in relation to the whole from which to conclude that either the Parish Meeting or the Parish Council and their predecessors have ever been in any now relevant way in possession of the whole. Because it practically makes little if any difference whether the Parish Council become owners under subsection (2) or subsection (3), and because to deal with the two particular fingers particularly would complicate the position without serving any useful purpose, I shall in these Unit Land proceedings disregard any letting of the two fingers.



- 7 -

My decision is that as regards the rest of the Unit Land I am not satisfied that any person is the owner of it and I shall therefore pursuant to section 8(3) of the 1965 Act direct the North Yorkshire County Council as registration authority to register Aysgarth and District Parish Council as owner of all the Unit Land except that part of which I shall as aforesaid direct the registration of Mrs Mabella Mary Green as owner.

I am required by regulation 30(1) of the Commons Commissioners Regulation 1971 to explain that a person aggrieved by this decision as being erroneous in point of law may, within 6 weeks from the date on which notice of the decision is sent to him, require me to state a case for the decision of the High Court.

TURN OVER



- 8 -

SCHEDULE  
(Documents produced)

Part I: by Mr Thomas Metcalfe

- TM/1            8 January 1963            Assent by Thomas Metcalfe, Isobel Metcalfe, Elizabeth Metcalfe and William Arthur Metcalfe as personal representatives of Arthur James Metcalfe of property described in the Schedule including "62 (Number on Tithe Plan), Garth (Description), - (particulars), 25p (area).
- TM/2            1872                        Paper (24" x 24") Aysgarth Union: Valuation of Township of Thornton Rust by Edward Roderick

Part II: by Mr T D Green

- TDG/1           8 August 1974            Conveyance by Peter Davy and Elizabeth Mary Davy to Mary Mabella Green of Longrigg all of which for purposes of identification delineated on plan annexed and thereon hatched red as comprised in a conveyance dated 31 July 1959 (see below).
- TDG/2           31 July 1959            Conveyance by Stanley Jackson and Ida Jackson to Peter Davy of messuage Lyndhurst delineated on plan annexed to a conveyance dated 28 June 1930 (see below).
- TDG/3           21 March 1955            Conveyance by Harold Gordon Monks and Alexandra Marie Monks to S and I Jackson of said TDG/2 premises.
- TDG/4           18 May 1951            Conveyance by Henry Kirkbridge to H G and H M Monks of said TDG/2 premises.
- TDG/5           1945                        Examined abstract of conveyance by Maurice Jubb to Henry Kirkbridge.
- TDG/6           28 June 1930            Examined abstract of conveyance by Hannah Cockburn to Maurice Jubb of messuage or dwellinghouse ... for purposes of identification shown on plan annexed.







## Part III: by Mr Jolley (during inspection)

- 6 November 1958      Conveyance by Willian Brough Kirkbridge, Shirley Kirkbridge and Richard Thomas Dawson Johnson as personal representatives of Henry Kirkbridge (he died 14 November 1957) to Kenneth James Jolley of land etc OS Nos 187 and 189 containing 1.069 acres with dwellinghouse known formerly as Thornton Cottage now as Pinehurst, with plan.
- 16 October 1947      Conveyance by John Hutchinson Wood to Henry Kirkbridge of all that close etc OS No. 187 containing .569 acres and all that cottage and dwellinghouse etc OS No. 189 containing .500 of a acre.

Dated This 29<sup>th</sup>

\_\_\_\_\_ day of January \_\_\_\_\_

1986

A. A. Baden Fuller

Commons Commissioner

